

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**CHARLES LEE MITTER,**

**Petitioner,**

**v.**

**Civil Action No. 2:05cv28**

**THOMAS McBRIDE, Warden,**

**Respondent.**

**ORDER**

It will be recalled that on April 1, 2005, Petitioner Charles Lee Mitter filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. Also on April 1, 2005, Petitioner filed Petitioner's Motion to Hold Petition, Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody, In Abeyance Pending Second State Application for Write of habeas Corpus. On January 27, 2006, Magistrate Judge Kaull filed his Report and Recommendation regarding Petitioner's motion to hold the petition in abeyance, wherein the Petitioner was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. On February 6, 2006, the Petitioner filed his Objections to Magistrate Judge's Report and Recommendation.

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Petitioner in his motion to hold the petition in abeyance were thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation. Furthermore, upon consideration of the Petitioner's objection, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in his Report and Recommendation.

Moreover, the Court, upon an independent de novo consideration of all matters now before it, is of the opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action with regard to the Petitioner's motion to hold the petition in abeyance. Therefore, it is

**ORDERED** that Magistrate Judge Kaul's Report and Recommendation be, and the same hereby is, accepted in whole. Accordingly, it is

**ORDERED** that the Petitioner's Motion to Hold Petition, Under 28 U.S.C. §2254 for Writ of Habeas Corpus by a Person in State Custody, In Abeyance Pending Second State Application for Write of habeas Corpus shall be, and the same hereby is, **DENIED.**

**ENTER:** March 23<sup>rd</sup>, 2006

**/s/ Robert E. Maxwell**  
United States District Judge